



Security Council

Distr.: General
27 October 2003

Original: English

**Letter dated 24 October 2003 from the Chairman of the
Security Council Committee established pursuant to resolution
1373 (2001) concerning counter-terrorism addressed to the
President of the Security Council**

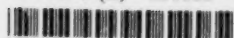
I write with reference to my letter of 18 July 2003 (S/2003/743).

The Counter-Terrorism Committee has received the attached third report from Yemen submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) **Inocencio F. Arias**
Chairman

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

Letter dated 21 August 2003 from the Permanent Representative of Yemen to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to enclose herewith the third report of the Government of Yemen on anti-terrorism measures.

(Signed) Abdullah M. Alsaidi
Ambassador
Permanent Representative

Annex to the letter dated 21 August 2003 from the Permanent Representative of Yemen to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Arabic]

Response to paragraph 1.2

Article 16 of Act No. 1 of 2001 on domestic associations and institutions provides as follows:

"The Ministry and its Offices shall keep a copy of documents and papers concerning the establishment of registered associations and institutions, shall publish them, and concerning accounting and record-keeping and related procedures."

The rules specify the types of records and data and record-keeping and disposal procedures. Article 23 (a) of the same Act specifies as follows:

"(a) Any domestic association or institution, with the knowledge of the Ministry, may collect assistance in kind or in cash from abroad from a foreign national or a foreign entity, or from any representative of them in the country. They may also, with the knowledge of the Ministry, send part of the said assistance abroad to persons or organizations for humanitarian purposes.

"(b) Any domestic association or institution, with the approval of the Ministry, may engage in any activity (humanitarian activities of a charitable nature in which such associations are officially permitted to engage) at the request of or at the behest of a foreign entity."

Moreover, Act No. 35 of 2003 on combating money-laundering has recently been promulgated. Article 2 of the Act defines money-laundering as: "Any act entailing the acquisition, possession, disposal, deposit, exchange, investment or transfer of funds for the purpose of concealing the true source of funds arising from offences specified in article 3 of this Act." Article 3 of the Act specifies that money-laundering is an offence punishable under the Act and that:

"A person shall be deemed to be a perpetrator of the act of money-laundering who commits, participates in, assists in, instigates or condones:

(a) Any offence involving funds arising from the commission of one of the following offences:

- (i) The offences specified in the Act on combating kidnapping and armed interception;
- (ii) Theft, misappropriation or seizure of public funds by deception, bribery or breach of trust;
- (iii) Forgery or counterfeiting of official seals, currency or public documents;
- (iv) Seizure of private funds punishable under the Code of Criminal Procedure or the Penal Code;
- (v) Smuggling;

(vi) Illegal import of or trafficking in armaments;

(vii) Cultivation or manufacture of or trafficking in drugs, as well as the production of or trafficking in alcoholic beverages, or other activities prohibited by law.

(b) Any of the following acts arising from any of the offences specified in paragraph (a):

(i) Concealment of the true source of illegal funds or providing a false justification of such funds;

(ii) Transfer or exchange of funds knowing that they are illegal, for the purpose of concealing or misrepresenting their origin or assisting a person to avoid punishment or liability;

(iii) Ownership, possession or utilization of illegal funds or using such funds to purchase convertible or non-convertible currency."

The International Convention for the Suppression of the Financing of Terrorism is still being considered by the House of Representatives and the competent authorities will adopt a series of implementation measures after it has been ratified.

Response to paragraph 1.3

The Republic of Yemen has taken a number of legislative and regulatory measures, as follows:

(i) Promulgation of Act No. 35 of 2003 on combating money-laundering (5 April 2003) which requires financial institutions and other professions involved in financial transactions (banks, currency exchanges, finance companies, insurance companies, stock and securities companies, finance leasing and real estate companies):

- Not to open or hold accounts in the name of individuals without checking on them through official documents concerning them and retaining copies thereof;
- Not to deal with legal persons without checking up through official documents concerning them and keeping a certified true copy thereof;
- To retain all documents relating to clients and their financial transactions or commercial or financial deals, whether domestic or foreign, for a period of not less than five years from the date of conclusion of the transaction; such documents must be produced at the request of the money-laundering intelligence unit of the Bank Monitoring Section of the Central Bank, under the supervision of the Governor;
- Financial institutions are also obliged to set up systems and rules for investigation and internal monitoring to prevent money-laundering transactions in accordance with the provisions of this act and of other related acts and with the assistance of the money-laundering intelligence unit.

(ii) Under Act No. 35 of 2003 on money-laundering, the Central Bank established the money-laundering intelligence unit by virtue of decision No. 48 of 2003, promulgated by the Governor of the Bank on 13 April 2003, which specified the functions of the unit;

(iii) The Governor of the Central Bank also promulgated decision No. 49 of 2003 setting up the money-laundering intelligence unit (13 April 2003) comprising experienced staff of the bank representing both sides (monitoring and legal).

Response to paragraph 1.4

With respect to the steps that may be taken by Yemen to freeze deposits held in private banks and financial institutions in Yemen at the request of another State, where such deposits are held within its jurisdiction, by residents or non-residents, both individuals and entities, suspected of having terrorist links, Act No. 35 of 2003, chapter 5, provides for international cooperation and the exchange of information and the handing over of non-Yemeni offenders. Article 16 of the Money-Laundering Act specifies as follows:

"In conformity with the provisions of this Act and subject to the agreement of the judiciary, the Committee may, on the basis of an official request from a judicial authority in any other State, provide such judicial authority with information concerning a transaction specified in the request relating to money-laundering, provided there is in existence a bilateral convention regulating the matter."

The Act permits the Committee against Money-Laundering, on the basis of a definitive judicial ruling stemming from another State in accordance with a bilateral convention regulating the matter, to request the Yemeni judicial authorities, in accordance with the laws in force, to trace, freeze or seize funds, assets and their related earnings connected with money-laundering offences, provided the judicial authority takes a decision on the request.

Enforcement of an order of the Central Bank of Yemen to freeze terrorism-related funds or assets in a financial institution in Yemen does not take a great deal of time because it is a precautionary measure: the Bank notifies the Prosecutor General and the latter applies to the President of the competent court for a precautionary restraining order. The Prosecutor General is also entitled to take precautionary measures pending the investigations and court proceedings.

Response to paragraph 1.5

In cases where there is no bilateral or multilateral convention with Yemen, if information or data reach the competent authorities of the Republic of Yemen concerning the possibility of a terrorist offence in the territory of one or more States or against their citizens or residents, Yemen notifies such State of the information or reports available to it concerning the possibility of a terrorist offence. This is done rapidly through the diplomatic channels that are used to submit notifications and reports, and through other channels, in order to convey the information. Where there is security cooperation through a bilateral convention between Yemen and another State, the information is directed to the competent body for combating terrorism in the State whose interests and population are targeted.

Response to paragraph 1.6

The Government of the Republic of Yemen has addressed this aspect through bilateral conventions with a number of fraternal and friendly States; these provide for the exchange of information and for cooperation on not using the territory of either State for the commission of terrorist acts.

Response to paragraph 1.7

The Republic of Yemen offers reciprocal assistance in criminal investigations and criminal proceedings to States that are not parties to the Arab Convention for the Suppression of Terrorism. This is done through bilateral conventions concluded with certain States.

Mutual assistance restricted to the implementation of Security Council resolution 1373 (2001) of 28 September 2001 is offered to States that are not parties with Yemen to any counter-terrorism convention.

Response to paragraph 1.8

(a) The Constitution has provided for measures of ratification or accession measures by the Republic of Yemen to international conventions in the following articles:

Article 91 which provides as follows:

"The House of Representatives shall ratify international political and economic treaties and conventions of a general nature, of whatsoever form or level, and in particular those connected with defence, alliance, truce, peace or border alterations, and those which involve financial commitments by the State or for which their implementation requires the enactment of a law."

Article 118, paragraph 13, of the Constitution empowers the President of the Republic (may God preserve him) to ratify agreements that do not require the approval of the House of Representatives, if approved by the Council of Ministers.

Similarly, article 135 (d) of the Constitution provides as follows:

"The Council of Ministers shall approve treaties and conventions before submitting them to the House of Representatives or the President of the Republic, according to the responsibilities of each."

(b) We wish to offer the following explanation with respect to the three universal conventions relating to terrorism. These conventions have been approved by the Council of Ministers (the executive authority of the Republic of Yemen) and have been transmitted to the House of Representatives. On completion of the constitutional and legal procedures required for accession, consideration will be given to the measures that have to be taken in the context of the national legislation consistent with the texts of these conventions. When these measures are taken, the Republic of Yemen will notify the Counter-Terrorism Committee in an official memorandum.

Response to paragraph 1.9

The Republic of Yemen has already provided the Security Council Committee established pursuant to 1373 (2001) concerning counter-terrorism with two detailed reports setting out the procedures and measures taken by the Government to combat terrorism in the light of the resolution. Moreover, in the two reports referred to, Yemen has already responded in detail to all the questions sent to it by the Counter-Terrorism Committee. Those responses were accompanied by detailed texts of the laws in force in the Republic of Yemen such as the Code of Criminal Procedure (Act No. 13 of 1994 and Act No. 24 of 1998 on combating, kidnapping and armed

interception), the Act regulating the carriage of firearms, munitions and explosives (No. 409 of 1992) and Act No. 47 of 1991 concerning the entry and residence of aliens, and so forth.

The Committee may therefore refer for additional information to the two reports submitted by the Government of the Republic of Yemen concerning measures to combat terrorism. However, the Republic of Yemen remains entirely ready to answer any questions to which the Committee considers it important to have responses and is prepared to take advantage of advice from the Committee's experts to cover any shortcomings in its national legislation to address the challenges of the phenomenon of terrorism.



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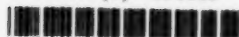
I write with reference to my letter of 6 June 2003 (S/2003/622).

The Counter-Terrorism Committee has received the attached third report from Tunisia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) **Inocencio F. Arias**
Chairman

Security Council Committee established pursuant
to resolution 1373 (2001) concerning counter-terrorism



Annex

Note verbale dated 15 September 2003 from the Permanent Mission of Tunisia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: French]

The Permanent Mission of Tunisia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) and, with reference to his letter of 30 May 2003, has the honour to transmit to him herewith the replies of Tunisia to the questions contained in that letter (see enclosure).

3 September 2003

Republic of Tunisia
Ministry of Foreign Affairs
General Department of International Organizations and Conferences
Department of the United Nations and International Conferences

Enclosure

Reply of Tunisia to the second set of questions and further comments with regard to the implementation of resolution 1373 (2001)

[Original: Arabic]

1. Implementation measures

1.2 Regarding the criminalization of terrorist financing and the prosecution of offenders

1.2.1 Ongoing legislation

At the time of submission of the supplementary report, a bill supporting international counter-terrorism efforts had indeed been drafted and submitted to the Constitutional Council for consideration of its constitutionality. The bill was then referred to the National Assembly (Parliament), which is currently considering it at the committee level.

In the meantime, Tunisia has ratified the International Convention for the Suppression of the Financing of Terrorism pursuant to Act No. 99 (2002) of 25 November 2002. It has also ratified the United Nations Convention against Transnational Organized Crime pursuant to Act No. 63 (2002) of 23 July 2002.

In accordance with the new obligations imposed on States Parties under the above two Conventions and in view of the existence of a firm organic link between the methods of financing terrorism and those of laundering the proceeds of crime, it was essential to expand the bill supporting international counter-terrorism efforts by also including provisions to combat money-laundering offences and prevent illegal financial procedures in order to ensure Tunisia's fulfilment of its international obligations. The bill was again submitted to the Constitutional Council for opinion and is currently under consideration by the National Assembly. Completion of the procedures for its ratification is expected during the current year.

The amended bill takes into account Security Council resolution 1373 (2001) and all related international conventions, as well as the recommendations made by the Financial Action Task Force on Money Laundering (FATF), in particular the eight special recommendations on terrorist financing. The bill accordingly covers the following essential areas of concern:

- Section I is devoted to supporting international counter-terrorism efforts;
- Section II is devoted to the combating and suppression of money-laundering;

- Section III comprises common provisions to prevent the financing of terrorism and combat money-laundering, dealing with the following matters:
 - The prevention of illegal financial procedures;
 - The establishment of a financial analysis committee within the Central Bank;
 - The establishment of a system for monitoring suspicious or unusual operations and transactions;
 - The requirement to report suspicious or unusual operations and transactions;
 - The establishment of mechanisms to freeze funds having a suspected link to money-laundering operations or the financing of terrorist activities.

The bill defines terrorist offences and offences that are treated in the same manner (incitement to hatred and racial or religious intolerance).

Terrorist crime is an ordinary-law crime punishable in accordance with penal provisions and is defined as a terrorist crime by association with criteria stipulated in article 4 of the bill. These link the crime to an individual or collective scheme to intimidate a person or group of persons or spread alarm among the population with the intention of influencing the policy of the State and prompting it to do or to abstain from doing any action, disturbing public order or international peace and security, causing harm to persons or property, damaging the headquarters of diplomatic and consular missions and international organizations, inflicting serious harm on the environment so as to endanger the life or health of inhabitants, or damaging vital resources, the infrastructure, transport, communications, information systems or public amenities.

Chapter II of our earlier report lists the ordinary-law crimes which are classifiable as terrorist crimes by simple association with the criteria for that classification of crime (see Tunisia's report contained in document S/2001/1316 of 31 December 2001).

As part of the effort to cover all aspects of resolution 1373 (2001) and the relevant international conventions, the bill accordingly seeks to introduce special provisions criminalizing certain acts and terrorist activities, as well as various forms of instigating, supporting and financing the same, making them into separate offences which are not dependent on carrying out or attempting to carry out a specific terrorist act.

Under the bill, the following acts are criminalized:

- Article 12: Inducement or incitement to commit terrorist offences or join an organization or group connected with terrorist offences (imprisonment of 5 to 12 years and a fine of 5,000 to 20,000 dinars);
- Article 13: Membership in an organization or group having adopted terrorism as a means of achieving its purposes, or receipt of military training with the intention of committing a terrorist offence in or outside the territory of the Republic (imprisonment of 5 to 12 years and a fine of 5,000 to 50,000 dinars);
- Article 14: Use of the territory of the Republic to recruit or train a person or group of persons with the intention of committing a terrorist act in or outside

the territory of the Republic (imprisonment of 5 to 12 years and a fine of 5,000 to 50,000 dinars);

- Article 15: Use of the territory of the Republic to commit or engage in preparations to commit a terrorist offence against another country or its citizens (imprisonment of 5 to 12 years and a fine of 5,000 to 50,000 dinars);
- Article 16: The supply of weapons, explosives, ammunition or similar materials, devices or equipment for the benefit of an organization, group or persons connected with terrorist crimes (imprisonment of 5 to 20 years and a fine of 5,000 to 50,000 dinars);
- Article 17: The placement of capabilities and expertise at the disposal of a group, organization or persons connected with terrorist crimes or the dissemination or supply of information with the intention of assisting in the commission of a terrorist offence (punishable by imprisonment of 5 to 20 years and a fine of 5,000 to 50,000 dinars);
- Article 18: The preparation of a meeting place for the members of an organization or group or for persons connected with terrorist offences, assistance in harbouring or concealing them, pursuit of efforts to secure their escape or ensure that they are not discovered or punished, and attempts to benefit from the outcome of their acts (imprisonment of 5 to 12 years and a fine of 5,000 to 20,000 dinars);
- Article 19: The contribution of funds by any means, whether directly or indirectly, or collection of the same in the knowledge that their purpose is to finance persons, organizations or activities connected with terrorist offences, regardless of whether or not the source of the funds contributed or collected is licit (imprisonment of 5 to 12 years and a fine of 5,000 to 50,000 dinars);
- Article 20: The concealment or facilitation of the concealment of the true source of movable or immovable property, income or profits belonging to individuals or bodies corporate of any form linked with terrorists or with terrorist organizations or activities, or agreement to place the same under an assumed name or assimilate them into the economy, regardless of whether or not the source of such assets is licit (imprisonment of 5 to 12 years and a fine of 5,000 to 100,000 dinars, the amount of which may, with court authorization, be increased to the equivalent of five times that of the assets which are the subject of the offence);
- Under article 21 of the bill, the penalties referred to in articles 19 and 20 may, according to the circumstances, apply to directors and representatives of bodies corporate whose personal liability is established, without this ruling out the prosecution of such bodies, which shall be punished by a fine equalling five times the amount of that payable for the original offence when their involvement in such offences is proven;
- Article 22: The failure, even where bound by professional secrecy, to notify immediately the competent authorities of any acts, information or instructions which may have emerged concerning the commission of a terrorist offence (imprisonment of one to five years and a fine of 1,000 to 5,000 dinars);
- Article 23: Breach of the requirement to give testimony concerning terrorist offences (imprisonment of three to six months and a fine of 100 to 1,000

dinars, without this ruling out application of the heaviest penalties prescribed for the offence of giving false testimony).

The introduction of the special provisions listed above and consideration of the acts concerned as separate offences does not, however, prevent the bill from taking into account the seriousness of such offences; in that regard, it requires application of the heaviest penalties imposable for the terrorist offence committed or for complicity in the offence, within the meaning of article 32 of the Criminal Code and the provisions governing complicity, if it is established that such separate offences are linked with a specific terrorist act, even if it was not actually carried out or attempted.

Further, the bill provides for heavier penalties in connection with repeat offences, the capacity of the offender, the circumstances in which the offence was committed and the outcome of the offence, and also prohibits the combination of penalties, even if the offences follow in succession.

As for the financial aspect of the prevention and suppression of terrorism and the freezing of funds which finance it, the bill not only criminalizes the contribution or collection of funds for the benefit of persons, organizations or activities connected with terrorist offences but also criminalizes other acts, illustrated essentially in the following:

- Articles 69, 70, 74 and 101: Contravention of the security rules and minimum accounting rules which must be adopted by all bodies corporate, including in particular the requirements to:
 - * Refrain from accepting any financial contributions or assistance of unknown origin or derived from illegal acts regarded by the law as offences, whether serious or less serious, or from individuals, bodies corporate, organizations or structures known to be involved, in or outside the territory of the Republic, in activities connected with terrorist offences;
 - * Refrain from accepting any funds from abroad other than through an approved intermediary having its main office in Tunisia;
 - * Refrain from accepting any cash sums equal to or exceeding 5,000 dinars, even if in the form of several payments between which there is a suspected link;
 - * Maintain accounting ledgers, as well as lists of receipts and transfers having a foreign connection, including in particular a statement of the sums related thereto and their motive, as well as identify the individual or body corporate concerned with the same, prepare an annual balance sheet and keep accounting ledgers and documents for a period of not less than 10 years from the date when work on them is complete;
 - * Verify the identity of the customer at the time of transaction and refrain from completing any operation or transaction where the identity of those concerned is unverified, insufficient or false, particularly when opening accounts, accepting deposits, renting safe-deposit boxes or carrying out large cash transactions.

Under the bill, directors or representatives of bodies corporate who violate the said rules are punished by imprisonment of six months to three years and a fine of 5,000 to 10,000 dinars, without this ruling out prosecution of the bodies corporate, which shall be punished by a fine equalling five times the amount of that payable for the original offence.

- Articles 73 and 101: Failure to comply with the requirement to undergo an external audit (imprisonment of six months to three years and a fine of 5,000 to 10,000 dinars, without this ruling out prosecution of the bodies corporate, which shall be punished by a fine equalling five times the amount of that payable for the original offence).
- Articles 76 (1) and 99: Breach of the requirement to declare to the customs authorities, when entering, exiting or in transit, any import or export of foreign currency equivalent to or exceeding an amount determined by ordinance of the Minister of Finance (imprisonment of 5 to 10 years and a fine of 3,000 to 300,000 dinars, with the possibility of a heavier fine equalling five times that prescribed for the offence).
- Articles 76 (2), 99 and 100: Breach of the requirement by approved intermediaries and subsidiaries authorized to perform currency exchanges to verify the identity of any person conducting operations with them in foreign currency of a value equivalent to or exceeding an amount determined by ordinance of the Minister of Finance, or breach of the obligation to report the matter to the Central Bank (imprisonment of one month to five years and a fine of 3,000 to 300,000 dinars, with the possibility of a heavier fine equalling five times that prescribed for the offence).
- Articles 86, 87 and 101: Breach of the requirement by the reporting party to suspend the operations or transactions which are the subject of the report or of the requirement to refrain from informing the party concerned of the contents of the report and of any consequential measures (imprisonment of six months to three years and a fine of 5,000 to 10,000 dinars, without this ruling out the prosecution of bodies corporate, which shall be punished by a fine equalling five times the amount of that payable for the original offence).
- Article 97: Wilful failure to fulfil the requirement to report suspicious or unusual operations and transactions (imprisonment of one to five years and a fine of 5,000 to 50,000 dinars).

In addition to the penalties mentioned, articles 45, 46 and 67 of the bill prescribe other punitive measures, consisting essentially in:

- Sequestration of the direct and indirect proceeds of the offence, even if they have been transferred to the forebears of the offender or to his descendants, siblings, spouse or relatives by marriage and whether such assets remain in their original form or were converted into other assets, except where it is established that they were not derived from the offence;
- Seizure of laundered funds and the direct and indirect proceeds of money-laundering offences and their sequestration for the benefit of the State, or alternatively, in cases where the said funds are not actually seized, the imposition of a fine of not less than the amount of the funds which are the subject of the offence;

- Confiscation of weapons, ammunition, explosives and other materials, devices and equipment used to commit or facilitate commission of the offence, together with items which it is an offence to manufacture, keep, use or trade;
- Confiscation of all movable and immovable property of the convicted party, as well as all or some of his funds if it is strongly suspected that they are being used to finance persons, organizations or activities connected with terrorist offences.

Under the bill, the perpetrators of terrorist offences may also be placed under administrative supervision for a period of not less than 5 years and not more than 10 years.

This does not rule out the handing down of all or some of the other supplementary penalties prescribed by law. These include that of banning the convicted party, for a period of not more than five years, from performing the professional and social functions and activities by means of which he exploited the facilities granted to him in order to carry out one or more operations to launder the proceeds of acts deemed by law to be offences, whether serious or less serious, or linked with the financing of persons, organizations or activities connected with terrorist offences.

1.2.2 Ratification of international treaties

- Tunisia signed the International Convention for the Suppression of the Financing of Terrorism on 2 November 2001. The signature was approved by the National Assembly pursuant to Act No. 99 (2002) of 25 November 2002 and the Convention was ratified by the President of the Republic pursuant to Ordinance No. 441 (2003) of 24 February, thereby entering into effect in Tunisia.
- The Constitution upholds the principle that, upon their approval by the National Assembly and subsequent ratification by the President of the Republic, conventions enter into the internal legislation currently in force and take precedence over internal laws.

In principle, it is unnecessary to repromulgate internal laws in order to incorporate the provisions of such conventions. However, the nature of the obligations arising from the ratification of certain conventions renders them non-self-executing, particularly those which are largely penal in character; the Penal Code stipulates that the legislative power shall take action to criminalize the acts in question and prescribe the penalties imposable for such acts in accordance with the principle that offences and penalties must be stipulated by law. Accordingly, no penalty can be imposed other than under a legal provision already in place, in accordance with article 13 of the Constitution and article 1 of the Code of Criminal Procedure.

The main areas of concern covered in the bill are summarized in paragraph 1.2.1 of this report, which also lists the offences introduced and the key mechanisms established in order to put its requirements into effect. Upon promulgation of the law, the adoption of a body of regulatory provisions referred to by the bill is anticipated.

1.2.3 Criminalization of terrorist fund-raising

In a bid to curtail the sources of finance for terrorism, article 19 of the bill criminalizes the contribution or collection of funds by any means, directly or indirectly, knowing that their purpose is for the financing of persons, organizations or activities connected with terrorist offences, regardless of whether or not the source of the funds contributed or collected is licit.

Article 20 of the bill also penalizes the concealment or facilitation of the concealment of the true source of movable or immovable property, income or profits belonging to individuals or bodies corporate of any form linked with terrorists or with terrorist organizations or activities, or agreement to place the same under an assumed name or assimilate them into the economy, regardless of whether or not the source of such assets is licit.

Article 15 of the bill also criminalizes the use of Tunisian territory to commit a terrorist offence against another country or its citizens or the undertaking of any activities in preparation for terrorist acts, including the contribution or collection of funds for the said purposes.

Article 14 of the bill criminalizes any intentional act with a view to the commission of a terrorist offence in or outside the territory of the Republic.

It is therefore clear that the bill criminalizes such acts and regards them as separate offences, which are not dependent on the extent to which they are connected with a specific terrorist act, whether or not it took place or was actually attempted and whether it was targeted at Tunisian territory or the territory of any other country.

It is also clear that these offences are not dependent on whether or not the funds contributed or collected with the intention of financing persons, activities or organizations connected with terrorist offences are from a licit source, nor are they dependent on the transfer of such funds from one country to another.

If, however, it is proved that the said offences are connected with a specific terrorist act, even if it did not take place or was not actually attempted, the heaviest penalty imposable for complicity in the intended terrorist act must be applied, in accordance with article 24 of the bill.

The bill may therefore be considered to cover all aspects of subparagraph 1 (b) of resolution 1373 (2002) and article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism.

1.2.4 Freezing of funds

Detention of a suspect pending investigation or committal for trial

The Tunisian legislature has strengthened the 'protection of individual freedoms to the level of that afforded by the Constitution. Under article 12 of the Constitution, custody is subject to judicial monitoring and preventive detention is dependent on court authorization. All forms of arbitrary detention or custody are therefore prohibited, which is in keeping with the recommendations contained in international instruments for the protection of human rights and the promotion of individual freedoms.

Moreover, although Tunisian law does not stipulate the administrative measures which some other legislations contain in order to limit individual freedoms, it empowers law-enforcement officers to hold a suspect in custody as part of preliminary enquiries or in execution of letters rogatory. It also authorizes examining magistrates to hold a suspect in preventive detention pending investigation proceedings.

This confirms that a suspect can be held in custody during preliminary enquiries and before investigation proceedings are authorized in his regard. Authorization may also be given to detain a suspect in preventive custody before he is committed for trial.

The system currently in force therefore strikes a balance between the requirements to achieve a measure of success in combating terrorist crime and the protection of individual freedoms so as to ensure consistency among Tunisia's various international obligations.

Freezing of the funds of a suspect pending investigation or committal to trial

Article 86 of the bill concerning the legal requirement to report suspicious or unusual operations provides for the immediate suspension of the operations or transactions which are the subject of the report, without the need for authorization to do so.

Article 87 of the bill also empowers the Financial Analysis Committee to authorize the reporting party to place a temporary freeze on the funds which are the subject of the report and deposit them in a suspense account. The reporting party is forbidden to notify the suspect of the freeze in order to avoid any attempt on his part to divert his remaining funds elsewhere.

The above measure remains in force throughout the period of investigation by the Financial Analysis Committee. If the investigations fail to confirm the suspicion about the operation or transaction which is the subject of the report, it so notifies the reporting party and authorizes the immediate lifting of the freeze.

If the suspicion is confirmed, however, it authorizes referral of the file to the Office of the Public Prosecutor for a decision as to the consequences and so notifies the reporting party, which continues to operate the freeze during a period sufficient to allow the Office of the Public Prosecutor to conduct its examination (a maximum of two days).

If the Office of the Public Prosecutor decides not to pursue the matter, the funds which are the subject of the report are immediately unfrozen. If, however, the Office of the Public Prosecutor sees fit to open an investigation, the decision to freeze the funds remains in force unless the competent judicial authority deems otherwise.

Article 94 of the bill also provides that the funds of a suspect may be frozen, even if no suspicious or unusual operation or transaction is reported, if authorized by the president of the Tunis Court of First Instance on the basis of a request from the Attorney-General to the Tunis Court of Appeal.

This confirms that the funds of a suspect may be frozen pending authorization of investigation proceedings or committal for trial.

Freezing of the funds of a suspect at the request of a foreign State

The bill contains no explicit provision to authorize the freezing of the funds of a suspect at the request of a foreign State. This does not, however, prevent the Tunisian Government from responding to such a request and seeking to obtain a decision to freeze such funds.

In this context, one of the above-mentioned methods of freezing may be used (authorization by the Financial Analysis Committee or by the president of the Tunis Court of First Instance on the basis of a request from the Attorney-General to the Tunis Court of Appeal).

The Tunisian legislature has vested in the State wide powers in bringing and pursuing public legal proceedings. As such, article 31 of the Code of Criminal Procedure empowers the prosecutor, even in the face of a complaint which is insufficiently grounded or justified, to request an investigation by the examining magistrate until such time as a charge is levelled or, where necessary, applications are made against a specific person. In all cases, a request by a foreign State for the freezing of funds may therefore be used as a basis for authorizing an investigation, on which occasion the examining magistrate may decide to freeze the funds of a suspect pending the completion of investigations.

1.2.5 Use of State territory for terrorist acts

See article 61 of the aforesaid Code of Criminal Procedures relating to attacks on the external security of the State and article 131 of the same Code relating to the complicity of offenders.

Article 61 bis provides that:

“Any Tunisian or alien shall be deemed to perpetrate an attack on the external security of the State and shall be liable to the penalties laid down in article 62 of this Code if he:

- Attempts in any way to undermine the integrity of Tunisian territory;
- Establishes contact with the agents of a foreign State for the purpose of harming, or having resulted in harm to, the military or diplomatic status of Tunisian territory.”

In regard to the criminalization of terrorist acts committed in other countries, see article 61 of the Code of Criminal Procedure. Article 62 bis of the Code also provides that: “The penalties stipulated in this section shall be imposed if the act took place against a State linked with Tunisia by a treaty of alliance or by an international instrument which takes its place.”

As for ongoing legislation, the bill supporting international counter-terrorism efforts seeks to prevent the use of the territory of the Republic as a staging ground for the support of persons, organizations or activities connected with terrorist offences, for the commission or facilitation of the commission of terrorist offences against any other country or its citizens, or for the undertaking of any preparatory activities for such purpose.

In that context, article 13 of the bill criminalizes membership in any organization or group, whatever its form or however many its members, which, even coincidentally or incidentally, has adopted terrorism as a means of achieving its

purposes. It also criminalizes the receipt of military training in or outside the territory of the Republic with the intention of committing a terrorist offence at home or abroad.

In the same context, articles 14, 15 and 18 of the bill criminalize use of the territory of the Republic to recruit or train a person or group of persons with the intention of committing a terrorist act in or outside the territory of the Republic, as well as use of the territory of the Republic to commit a terrorist offence against any other country or its citizens or engage in preparations for that purpose, including the preparation of a meeting place for the members of an organization or group or persons connected with terrorist offences, assistance in harbouring or concealing them, pursuit of efforts to secure their escape or ensure that they are not discovered or punished, and attempts to benefit from the outcome of their acts.

Articles 16, 17, 19 and 20 of the bill criminalize other forms of support, such as the supply of weapons, explosives, ammunition or similar materials, devices or equipment for the benefit of an organization, group or persons connected with terrorist offences, the placement of capabilities or expertise at their disposal, the dissemination or supply of information with the intention of assisting in the commission of a terrorist offence, the contribution or collection of funds for their benefit, concealment of the true source of movable or immovable property, income or profits belonging to them, and agreement to place the same under an assumed name or assimilate them into the economy.

In terms of application, the customs authorities are responsible for taking all appropriate measures to implement the provisions of national laws and the international conventions which have been ratified and for seeking to implement the recommendations and resolutions of international bodies and organizations, in particular the World Customs Organization (WCO), which is concerned with mutual administrative cooperation among customs administrations. In this respect, it is worth noting that, at its two sessions held in June 2002, WCO adopted a draft resolution on security and facilitation of the international trade supply chain (see attachment), which was presented by the United States of America with the aim of combating terrorism in the wake of the events of 11 September 2001.

The implementation of this resolution requires human and financial resources, access to modern technologies for the electronic exchange of information, improved customs capabilities and enhanced performance standards, which are lacking in certain customs administrations. WCO and its member States are endeavouring to lay the appropriate groundwork of mechanisms, information bases and standardized procedures needed to implement the said resolution.

On that score, the Tunisian customs administration is closely following such activities and making efforts to exploit modern technologies to monitor the movement of international trade and counter illicit customs activities by:

- Using x-ray equipment to monitor containers;
- Exchanging information electronically among the various parties concerned with foreign trade;
- Using modern techniques in matters of selection and risk assessment;

- Working in conjunction with the security authorities to secure national borders by means of joint teams (specializing in explosives and narcotics) stationed at points of transit by land, air and sea;
- Working in conjunction with the concerned authorities (the National Guard and the Tunisian Navy) to monitor the Tunisian coastal strip and territorial waters and combat clandestine immigration and all threats to security.

Tunisia is endeavouring to adopt the necessary measures within the set deadline (1 July 2004) with a view to entering the stage of implementing the amendments made to the International Convention for the Safety of Life at Sea.

It also regularly follows the activities of the International Labour Organization aimed at the amendment of the Seafarers' Identity Documents Convention, 1958 (No. 108).

1.2.6 Border control

- Since 10 December 2002, the system for scanning alien machine-readable passports has been gradually introduced to border police stations and posts.
- Scanning equipment for machine-readable passports was installed at border units on a priority basis, taking into account:
 - * The volume of traffic entering and exiting through Tunisia's international airports and the protection of persons arriving in Tunisia;
 - * The vulnerability of the western border strip and in particular the growth of terrorism in some neighbouring States;
 - * The large amount of traffic transiting through Ra's al-Jadir (almost 15,000 passengers a day) and the vulnerability of certain nationalities, particularly those from Africa;
 - * The importance of the ports of Tunis and Halq al-Wadi (La Goulette) for the anchorage of Tunisian and foreign vessels and for leisure trips, and the volume of transit traffic.

All remaining border units will very shortly be equipped to scan machine-readable passports.

1.3 Protection of the economic and financial system

1.3.1 The bill seeks to establish an integrated system to achieve transparency of financial transactions and thus ensure that Tunisia's economic and financial system is not exploited in order to finance persons, organizations or activities connected with terrorist offences. Emphasis is placed on the following elements:

- The establishment of minimum accounting rules and security rules that are binding on all bodies corporate, including non-profit organizations, with a view to ensuring that they are not used as a cover for the financing of terrorism (in particular, the requirement to identify the customer in advance of any transaction and the ban on numbered accounts and financial transfers of unknown origin);
- The establishment of a system for monitoring and reporting suspicious or unusual transactions;

- The prompt establishment of a system for freezing funds involved in suspicious transactions;
- The establishment of a financial analysis committee within the Central Bank.

(a) In regard to the criteria adopted for the monitoring of suspicious or unusual operations and transactions, bearing in mind that the ways and means contrived to finance terrorism and conceal funds belonging to persons, organizations and activities connected with terrorist offences are constantly evolving, the legislature preferred to adopt a flexible system. Such criteria are therefore set forth in the regulatory provisions, rather than in the bill itself.

In that context, article 80 of the bill tasks the Financial Analysis Committee with issuing directives to assist banking and non-banking financial institutions in monitoring and reporting suspicious or unusual operations and transactions. Article 77 of the bill also tasks the authorities in charge of monitoring the said institutions and members of professions subject to the reporting requirement with devising programmes and more effective application measures to counter the offences of financing terrorism and money-laundering, as well as with monitoring the implementation of such programmes and measures.

One of the advantages of this flexible system is the potential which it offers for reviewing the criteria for the monitoring of suspicious and unusual operations and transactions and continually adapting them to the new methods devised to finance terrorism and conceal the funds of persons and organizations connected with terrorist offences.

(b) Article 85 of the bill requires all banking and non-banking financial institutions, as well as members of professions who are qualified by virtue of their duties to perform, monitor or give advice on financial operations and transactions resulting in the movement of funds, immediately to report any suspicious or unusual operations and transactions which give reason to suppose that they are directly or indirectly linked with the financing of persons, organizations or activities connected with terrorist offences.

In order to avoid listing all financially related professions, care was taken to employ a general form of wording that encompasses all such professions, including accounting experts, financial advisers, lawyers, notaries public, real-estate agents and others.

(c) On the one hand, the bill encourages fulfilment of the requirement to report suspicious or unusual operations and transactions by laying down the rule that neither legal proceedings for damages nor blame may be directed against any individual or body corporate for having fulfilled that requirement in good faith. On the other hand, it prescribes the penalty of imprisonment of one to five years and a fine of 5,000 to 50,000 dinars for breach of the said requirement.

(d) In accordance with the bill, a committee competent in financial analysis, known as the Tunisian Financial Analysis Committee, was established within the Central Bank and is composed of a steering panel, an operational unit and a general secretariat. The duties of this committee are essentially as follows:

- To issue directives to assist banking and non-banking financial institutions in monitoring and reporting suspicious or unusual operations and transactions;

- To provide assistance with research activities, training, study and, in general, any activity relating to its field of intervention;
- To receive and analyse reports concerning suspicious or unusual operations and transactions and, where necessary, authorize the reporting party to place a temporary freeze on the funds which form the subject of the report and place them in a suspense account until its own work is complete;
- To determine whether the outcome of such reports in the light of its investigations shall be to:
 - * Authorize the reporting party to pursue completion of the operation or transaction which was temporarily suspended, as well as unfreeze the funds which are the subject of the report, if the suspicion concerning such operation or transaction is unconfirmed, or;
 - * Immediately refer the findings of its work and any documents in its possession to the prosecutor for determination of the outcome, if the investigations confirm the suspicion concerning the operation or transaction which is the subject of the report;
- To represent the various departments and authorities concerned with such matters at the domestic and foreign levels and facilitate contact among them;
- To seek assistance from its counterparts in foreign countries to which it is linked by cooperation agreements and accelerate the exchange of financial information in order to ensure early warning of terrorist offences and prevent their commission.

(e) Section III of the bill deals with common provisions to combat the financing of terrorism and counter money-laundering.

The bill has adopted a broad definition of the concept of money-laundering, which includes not only narcotics offences, as is the case with a number of comparable laws, but also all serious offences deemed by law to be offences, whether serious or less serious, which is to say those offences, including terrorist offences, which are punishable by imprisonment for a minimum term of 16 days.

Funds intended for money-laundering offences usually stem from illicit sources, whereas terrorism is usually financed through contributions from a licit source. It was therefore essential to take this fact into consideration and criminalize the contribution or collection of funds for the benefit of persons, organizations or activities connected with terrorist offences, as well as the concealment or administration of such funds or their assimilation into the economy, regardless of whether or not they derive from a licit source.

Consequently, the bill imposes on banking and non-banking financial institutions and on members of the above-mentioned professions the requirement to report immediately in writing to the Tunisian Financial Analysis Committee all suspicious or unusual operations and transactions which give reason to suppose that they are directly or indirectly connected with the proceeds of unlawful activities regarded by the law as serious or less offences or with the financing of persons or organizations connected with terrorist offences.

It is therefore clear that the reporting requirement is not confined to the laundering of proceeds derived from narcotics offences alone but that it also includes all other serious offences, as well as funds derived from operations and transactions having a suspected link to the financing of individuals or bodies corporate connected with terrorist offences, regardless of whether or not such funds are from a licit source.

1.3.2 It was affirmed in our previous report that Tunisia has no alternative system for the transfer of funds, which task is exclusively assigned to loan institutions and the Tunisian Post Office (see Tunisia's report contained in document S/2002/1024 of 30 August 2002).





Security Council

Distr.: General
27 October 2003

Original: English

Letter dated 24 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 16 June 2003 (S/2003/651).

The Counter-Terrorism Committee has received the attached supplementary report from the Marshall Islands, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) Inocencio F. Arias
Chairman

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

**Letter dated 8 September 2003 from the Permanent
Representative of the Marshall Islands to the United Nations
addressed to the Chairman of the Counter-Terrorism Committee**

Upon instructions of my Government, I have the honour to submit the second report of the Republic of the Marshall Islands to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(Signed) Alfred Capelle
Ambassador
Permanent Representative

Enclosure

Government of the Marshall Islands' Clarification Report pursuant to paragraph 6 of Security Council resolution 1373 (2000)

Sub-paragraph 1 (a):

- *Do the legal provisions in the Marshall Islands which oblige financial institutions and cash dealers to report suspicious transactions also oblige other intermediaries like (for example lawyers, notaries and accountants, when engaged in brokering activities, as distinct from the provision of professional advice) as well as other natural and legal persons to report suspicious financial transactions to the relevant authorities.*

Answer: Section 2 (IV) (iv) of the Marshall Islands Banking Act 1987 defines financial institutions as any person who carries on the business of money transmission services; issuing and administering means of payment (such as credit cards, travelers' checks and bankers' drafts); guarantees and commitments; trading in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities; underwriting share issues and participation in such issues; money-brokering; portfolio management and advice; safekeeping and administration of securities; credit reference services; safe custody services.

Section 67 (1) (a) of the same Act states that the Commissioner shall receive reports of transactions issued by financial institutions... Furthermore, Section 67 (i) also states that the Commissioner shall have the authority to request additional information from financial institutions and cash dealers where the Commissioner has reasonable ground to believe that such information is essential in discovering money laundering activity.

Additionally, Section 67 (l) states that the Commissioner shall have the authority and ability to apply for a warrant to enter any premises belonging to or in the possession or control of a financial institution, cash dealer, or any officer or employee thereof, and to search the premises and remove any documents, materials, or other things therein for the purposes of preventing money laundering activity...

Furthermore, Section 68 (1) states that a financial institution or cash dealer shall maintain accounts in the name of the account holder. They shall not open or keep anonymous accounts or accounts which are in fictitious or incorrect names. Furthermore, Section 68 (2) says that a financial institution or cash dealer shall record and verify the identity, representative capacity, domicile, legal capacity, occupation or business purpose of persons, as well as other identifying information on those persons, whether they be occasional or usual clients, through the use of documents providing convincing evidence of their legal existence and the powers if their legal representative, or any other official or private documents when initiating or conducting business relations, especially when opening new accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, or performing cash transactions...

Finally, Section 70 (1) states that *financial institutions and cash dealers shall, within 3 days of the transaction, report to the commissioner all suspicious transactions, including but not limited to those which are ten thousand dollars (\$10,000) or more or multiple transactions which, altogether, exceed ten thousand dollars if they are undertaken by or on behalf of any one person during any twenty-four hour period or, complex or unusual transactions, whether completed or not, and all unusual patterns of transactions, and otherwise significant but periodic transactions, which have no apparent economic or lawful purpose.* It is to be noted here that the Commissioner may provide additional information or criteria to be used in identifying suspicious transactions.

Sub-paragraph 1 (b):

- Could the Marshall Islands outline the legislation that will criminalize the financing of terrorism and a progress report of its enactment? It is to be noted here that for an act to constitute an offense, it is not necessary that the funds are used to carry out a terrorist offense (see article 2 paragraph 3 of the Convention for the Suppression of Financing of Terrorism). The acts sought to be criminalized are capable of being committed even if:
 - The only related terrorist act takes place or is intended to take place outside the country;
 - No related terrorist act actually occurs or is attempted;
 - No transfer of funds from one country to another takes place; and
 - The funds are of a legal origin.

Answer: The Government of the Marshall Islands has enacted Public Law 2000-20 which is an *Act to make provision for the prevention of money laundering, and otherwise enable the unlawful proceeds of serious crime to be identified, traced, frozen, seized or confiscated; and for connected purposes.*

The purpose of the Act is primarily to prevent, repress and to eliminate all kinds of financial aids to terrorism originating out of the Marshall Islands and also anywhere in the world. The Banking Commissioner has ordered all financial institutions to report any suspicious transactions as soon as such transaction is detected. The financial institutions and all other businesses dealing in cash transactions have been following the order. However, to date, there have not been any suspicious transactions reported by the banks and other financial institutions in the Republic of the Marshall Islands.

Sub-paragraph 1 (c)

- Does the mechanism defined under the anti-money-laundering legislation which enable the authorities to freeze financial assets or economic resources also include

the freezing of financial assets of terrorists who are outside the territory of the Marshall Islands?

Answer: Public Law 2000-20, Section 71 (1) states that, *the Commissioner or Attorney General may seize and, in accordance with this Section detain, any currency which is being imported into or exported from the Republic of the Marshall Islands, if: (a) he or she has reasonable grounds for suspecting that it is: (i) property derived from a serious offense; (ii) intended by any person for use in the commission of a serious offense.*

Furthermore, Section 71 (5) states that *no currency detained under this section shall be released where: (b) proceedings are instituted in the Republic of the Marshall Islands or elsewhere against any person for an offense with which the currency connected, unless and until the proceedings relating to the relevant application or the proceedings for the offense have been concluded.*

- It is to be noted here that funds, financial assets and economic resources connected with terrorism that require to be frozen may be of legal origin, not be used as yet for the commission of terrorist acts and not represent the proceeds of any crime. Could funds held by non-residents in the Marshall Islands and suspected of having terrorist links be frozen at the request of another state?

Answer: Section 22 (1) of the Public Law 2002-65 states that, *any law enforcement officer or customs official of the Marshall Islands may seize and, in accordance with this section detain, any funds, that the officer or official has probable cause to believe were derived from or intended for terrorism, including, without limitation, funds being imported into or exported from the Marshall Islands.*

Section 22 (2) also states that, *funds of, or intended for, terrorist organizations shall be frozen, seized, and in accordance with this section detained, where the organization has been designated as a terrorist organization by the United Nations Security Council, or by the Minister pursuant to regulations promulgated pursuant to this act, or where there is probable cause to believe that the entity involved is a terrorist organization.*

Sub-paragraph 1 (d):

- What laws and other practical control and surveillance measures exist to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purpose, particularly the financing of terrorism?

Answer: Section 20 (1) says that, *any person who knowingly, by any means, directly or indirectly, solicits, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part:*

- (a) for terrorism;
 - (b) for the benefit of persons who engage in terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in terrorism; or
 - (c) for the benefit of person and entities acting on behalf of or at the direction of any person referred to in subsection 1(b);
- commits a crime punishable by a term of not less than 30 years and not more than life imprisonment, or a fine of not more than \$100,000,000 or both.

Sub-paragraph 2 (a):

- Effective implementation of sub-paragraph 2 (a) of the Resolution requires States to suppress recruitment of members of terrorist groups either inside or outside the Marshall Islands. Please describe the legal and other measures in place that prohibit the recruitment of terrorists in the territory of the Marshall Islands to terrorist groups operation either inside or outside that territory. It should be noted that it is not always the case that a recruiter actually belongs to a criminal or terrorist organization. There is always the possibility of recruitment to terrorist bodies resulting from deception, such as a representation that the purpose of recruitment is one (eg. Teaching) which is different from its real purpose.

Answer: Section 13 of the Public Law 2002-65 states that, *the Attorney General shall take appropriate measures, in accordance with the Constitution and the laws of the Marshall Islands:*

- (1) *as may be necessary to establish jurisdiction over and prosecute in the Marshall Islands any crime established by this Act;*
- (2) *to investigate terrorism, and upon receiving information that an alleged offender may be present in the Marshall Islands, take the person into custody and take other appropriate measures so as to ensure the alleged offender's presence for the purpose of prosecution;*
- (3) *to take into custody and extradite any alleged offender who is present in the Marshall Islands, and who is subject to arrest and detention for purposes of extradition pursuant to any law in force in the Marshall Islands;*
- (4) *to provide early warning and furnish any relevant information in the possession of Marshall Islands to those countries which the Attorney General believes would have jurisdiction, where there is reason to believe that a terrorism offense has been or will be committed;*
- (5) *to identify, detect, freeze, seize, and obtain forfeiture of any funds used or allocated for the purpose of committing any terrorism offense as well as the proceeds derived from such offenses...*

Sub-paragraph 2 (d):

- What is the competence of the courts in the Marshall Islands to deal with the following kinds of acts:

- An act committed outside of the Marshall Islands by a citizen or by a person who is habitually a resident of the Marshall Islands (whether that person is present or not);

Answer: In the event that a citizen or resident of the Marshall Islands committed an act outside the Republic, Section 15 (1) of Public Law 2002-67 states that, *where a foreign country requests the Attorney General to obtain the issuance of a restraining order against property some or all of which is believed to be located in the RMI, criminal proceedings have begun in the foreign country in respect of a serious offense, and there is probable cause to believe that the property relating to the offense or belonging to the defendant or the defendant's coconspirators is located in the RMI, the Attorney General may apply to the High Court for a restraining order.*

Section 15 (2) further states that, *where the Attorney General makes application to the High Court under subsection (1), the court may make a restraining order in respect of the property, as requested by the Attorney General, in relation to the application and to any restraining order issued as a result, as if the serious offense that is the subject of the order had been committed in the RMI.*

- An act committed outside the Marshall Islands by a foreign national who is currently in the Marshall Islands.

Answer: A request to the RMI by a foreign country for international assistance must be made in writing to the Attorney General or a person authorized by the Attorney General to receive requests by foreign countries. However, the Attorney General must make application to the High Court of the Marshall Islands to accommodate the requests received from foreign countries whether these may be restraining orders or otherwise requests for enforcement of foreign confiscation orders. Furthermore, Section 14 (3) of the Public Law 2002-65 states that, *for the purpose of extradition, a terrorism offense shall be treated, as if it had been committed not only in the place in which it occurred but also in the territory of any country Party to an international terrorism convention that is required to establish jurisdiction over the offense in accordance with that convention.*

Sub-paragraph 3 (c)

- Please provide a list of the countries with which the Marshall Islands have concluded bilateral treaties and multilateral arrangements relating to terrorism.

Answer: RMI is party to all the 12 international conventions on terrorism: (1) The International Convention on Offences and Certain Other Acts Committed on Board Aircraft (2) The Convention for the Suppression of Unlawful Seizure of Aircraft (3) The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (4) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (5) The Protocol for the Suppression of Unlawful Acts of Violence at

Airports Serving International Civil Aviation (6) The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (7) The International Convention for the Suppression of the Financing of Terrorism (8) The International Convention for the Suppression of Terrorist Bombings (9) The Convention on the Marking of Plastic Explosives for the Purpose of Detection (10) The Convention on the Physical Protection of Nuclear Weapons (11) The International Convention against the Taking of Hostages and (12) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Domestic Agents.

In June 2002, the Marshall Islands DFIU, after being sponsored by the United States, was granted full membership in the Egmont Group. Membership in the Egmont Group is highly valued by the Marshall Islands because it enables the DFIU to develop communications with other financial intelligence units (FIUs). During that same period, the Marshall Islands also became a member of the Asia/Pacific Group on Money Laundering. The Marshall Islands looks forward to using the Asia/Pacific Group to develop and strengthen its ties with the other member states in the region.

On 6 January 2003, a letter of agreement on combatting money laundering between the Government of the United States of America (USG) and the Government of the Republic of the Marshall Islands (GRMI) was signed. This project is designed to establish GRMI capability to (a) to detect and deter money laundering, (b) strengthen the operation of the Domestic Financial Intelligence Unit, (c) protect the confidentiality of the data disclosed to the Domestic Financial Intelligence Unit and (d) share financial intelligence with international administrative authorities. Actions to be taken include the purchase and installation of computer equipments that will be used for storage and analysis of financial disclosures from RMI's financial industry

Sub-paragraph 3 (d)

- The CTC would appreciate an outline of the legislation which has been enacted to implement the Resolution and a progress report on the 6 Counter-terrorism Conventions and Protocols which were approved for ratification by the Parliament of the Marshall Islands in January 2002.

Answer: The following legislation has been enacted in 2002 by the Parliament of the Republic of the Marshall Islands:

- The Counter-Terrorism Act
- The Proceed of Crimes Act
- Amendments to the Banking Act; re Money Laundering
- Foreign Evidence Act
- Mutual Assistance in Criminal Matters Act
- The Transnational Extradition and Transfer of Convicted Persons Act

The Government of the Marshall Islands has implemented enforcement measures relating to these laws immediately upon the effective dates.

Paragraph 4:

- Have the Marshall Islands addressed any of the concerns expressed in paragraph 4 of the Resolution?

Answer: The Marshall Islands has enacted laws against terrorism of all kind and also established mechanisms that would counter terrorist acts all over its territory. These include legislation covering banking, money laundering, importation and exportation of weapons of mass destruction including small arms and light weapons, etc.

Other matters:

- Could the Marshall Islands please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the law, regulations and other documents that are seen as contributing to compliance with the Resolution.

Answer: Please see exhibit A-1.

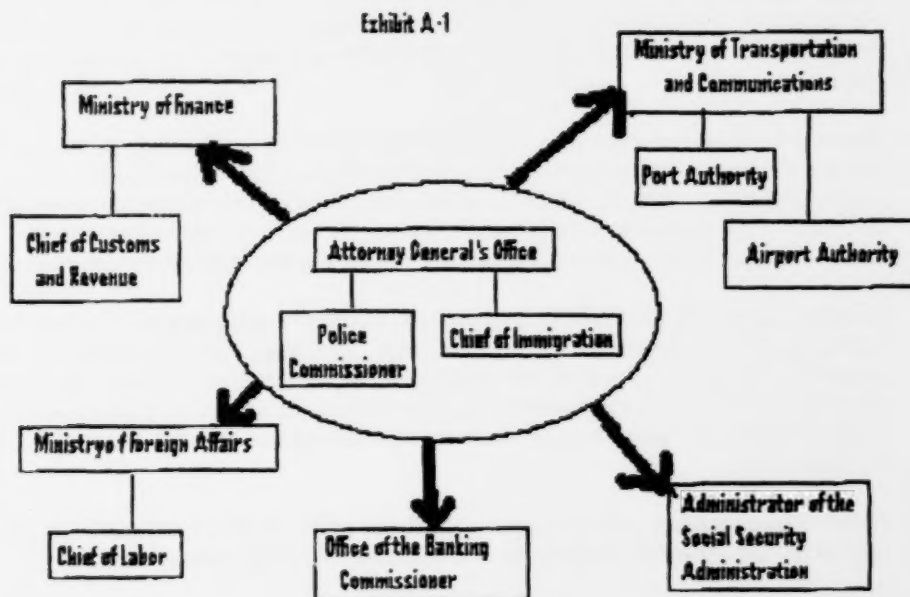


EXHIBIT A-1

Banking Commissioner – statutory responsibilities include establishment of banking policies in which every financial institutions license to do banking in the Republic must follow. Failure to comply with the bank policies promulgated by the Banking Commissioner will result in either suspension or revocation of business license otherwise will be ordered to pay heavy fines and/or serving imprisonment sentences for a specified period of time. The Commissioner reports to the Attorney General who gives orders to the Commissioner to either confiscate all assets and funds under suspicious individuals and organizations that are associated with terrorist organizations around the world.

Director of Port Authority – responsible for ensuring vessels, which are suspicious of carrying weapons and other equipments to be used to promote terrorism in the world, that are seeking permission to pass through the main port of entry in the Republic shall not be allowed to enter its territorial waters.

Chief of Custom and Revenue – statutory responsibilities include ensuring that individuals, associations and other licensed organizations operate legitimate businesses pursuant to the laws of the country and that taxes are paid accordingly. The Chief reports all criminal complaints to the Attorney General for prosecution.

Police Commissioner – statutory responsibilities include being in charge of the National Police Force. The Police Commissioner reports to the Attorney General. The Commissioner and every individual officer on the force have the power to arrest anybody on the spot based on a reasonable belief that the person is suspected of having committed a crime.

Director of Airport Authority – responsibilities include being in charge of the operation and security of the Amata International Airport in Majuro. The director authorizes landing and taking off of all international and domestic aircrafts entering the airspace and territories of the Republic of the Marshall Islands. However, the director reports all suspicious terrorist and non-terrorist aircrafts to the Attorney General for prosecution.

Chief of Labor – responsibilities include screening and investigating applications for employment in the Republic by foreign nationals. The Chief is also responsible for controlling the inflow of nonresident workers and dependants in the country. Protection and preservation of jobs for resident workers is the primary objective of the Chief of Labor division. All suspicious applicants are reported right away to the Attorney General for prosecution.

Chief of Immigration – the primary responsibility of the Chief of Immigration is to control the movement of immigration and migration of foreign nationals including

residents and citizens of the Republic. The Chief has the statutory power to deport and to reject any entry applications by foreign nationals to the country. The Chief of Immigration reports all suspicious violators of the immigration rules and regulations to the Attorney General for prosecution. The Immigration Chief and every one of the Immigration Officers have to the power to arrest on the spot any person based on the reasonable belief that the person is suspected of having committed a crime.

Administrator of Social Security Administration – The administrator is responsible for the management of the retirement benefits for future retirees. It is the duty of the administrator to ensure eligibility to enroll in the Social Security Administration system is authorized by the agencies responsible, such as the Labor Division and the Immigration Division. Any non-resident applicant prior to joining the system must secure authorized employment. The Administrator reports any suspicious persons to the Attorney General for prosecution.



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27 October 2003

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Letter dated 23 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 July 2003 (S/2003/738).

The Counter-Terrorism Committee has received the attached third report from the former Yugoslav Republic of Macedonia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) **Inocencio F. Arias**
Chairman

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

Note verbale dated 22 October 2003 from the Permanent Mission of the former Yugoslav Republic of Macedonia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Macedonia to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee, has the honour to transmit the second supplementary report of the Republic of Macedonia on the implementation of resolution 1373 (2001) (see enclosure).

Enclosure

**SECOND SUPPLEMENTARY REPORT TO THE INITIAL REPORT OF THE
REPUBLIC OF MACEDONIA TO THE COUNTER-TERRORISM
COMMITTEE (CTC) SUBMITTED PURSUANT TO SC RESOLUTION 1373
(2001)**

On questions and comments raised in the letter from the Chairman of the Counter-Terrorism Committee, point 1., "Implementation measures":

1.2 The draft Law Amending the Penal Code of the Republic of Macedonia envisages changes and amendments to more than a hundred existing articles of the Penal Code, as well as adding around twenty new articles. The draft was reviewed by the Government and submitted to the Parliament of the Republic of Macedonia for adoption. With the view of the first reading scheduled to take place soon, it is to be expected that the second reading and final adoption of the law will follow presumably by the end of this year.

The following proposals contained in the draft law reflect the efforts of the Republic of Macedonia to address effectively on national level the implementation of the provisions contained in the SC resolution 1373 (2001) and the global efforts to fight terrorism:

- As mentioned in the initial report, a stricter penal policy will be imposed with regard to the crime of terrorism (article 313 of the Penal Code) by increasing the minimum prescribed sentence from 3 to 4 years in prison.
- A new crime entitled "Terrorist organization" (new article 394-a) is introduced in the draft Penal Code, to read as follows: " (1) A person who creates a group, gang or another criminal organization for the purpose of committing crimes of: murder, assaults, kidnapping, destroying of public facilities, transport systems, infrastructure, information systems and other facilities in public use, high-jacking of planes or other means of transportation, production or trade in nuclear, biological or chemical weapons or other weapons and hazardous material, releasing of radioactive, poisonous and other hazardous substances or causing fire or explosion, destroying of water and energy facilities and basic natural resources, with the aim to create sense of insecurity or fear among the population and endangering the constitutional order in the country or interests of an international organization or of a foreign state, shall be sentenced to minimum eight years in prison. (2) A member of a group, gang or another criminal organization, as well as the one who provides financial means or assists in another way, shall be sentenced from four to ten years in prison. (3) The punishment prescribed in (2) shall also apply to one who publicly call for or support creation of a terrorist organization. (4) The perpetrator of the crime contained in paragraph 1 who by disclosing the organization or in another way prevents committing of the planned crime, shall be sentenced to imprisonment from three months to three years, or may be released from sentencing. (5) The perpetrator from paragraph 2 who discloses the organization before committing, as its member or for its purpose, the crimes listed in paragraph 1 shall be released from sentencing. (6) Objects and means intended for preparation

of crimes, as well as financial assets of the organization shall be confiscated.

- The crime of "Association for enemy activities" will undergo certain changes and will read as follows: "(1) A person who plots or forms a gang, group or another association of persons or organization for committing crimes of high treason (article 305), surrender to occupation (article 306), endangering of territorial integrity (article 307), endangering of independence (article 308), murder of representatives of the highest state organs (article 309), kidnapping of representatives of the highest state organs (article 310), assaulting of representatives of the highest state organs (article 311), terrorism (article 313), diversion (article 314), sabotage (article 315), obstruction of the fight against the enemy (article 321) and serving in enemy army (article 322, paragraph 2), shall be sentenced to minimum four years in prison. (2) A person who becomes member of an association from paragraph 1, shall be sentenced from one to five years in prison. (3) The perpetrators of the crime from paragraph 1 who by disclosing the association or in another way prevents committing of crimes contained in paragraph 1, shall be sentenced from three months to three years, or may be released from sentencing. (4) A member of an association from paragraph 1 who discloses association before committing, as its member or for its purpose, any of the crimes listed in that paragraph, shall be released from sentencing. (5) Objects and means intended for preparation of crimes, as well as financial assets of the organization shall be confiscated.

- The draft Penal Code introduces three (3) new crimes:

"Approval or justification of genocide, crimes against humanity or war crimes (article 407-a)" which reads as follows: "(1) A person who by means of information system publicly negates or severely minimizes, approves or justifies crimes from articles 403 to 407 (genocide, war crimes against civilian population, war crimes against the wounded and the sick, war crimes against prisoners of war, using of prohibited combat means) shall be sentenced from one to five years in prison". (2) Should the negation, minimization, approval or justification be done with the intention to instigate hatred, discrimination and violence against a person or a group of persons on grounds of national, ethnic or racial origin or religious belonging, the perpetrator shall be sentenced to minimum four years in prison."

"Misuse of chemical or biological weapons" (article 407-b) which reads as follows: "(1) A person who makes or develops, produces, procures, stockpiles, sales or purchases, or brokers in sales or purchase, posses, carries or transports chemical or biological weapons or any combat weapon, or wages war in a manner prohibited by international law, shall be sentenced from three months to three years in prison."

"Crime against humanity" (article 403-a) which reads as follows: "A person who with an intention to systematically exterminate civilian population, orders committing of murders, serious injuries, physical extermination, putting someone into slavery, deportation or forced displacement of population, confinement or other forms of deprivation of freedom contrary to international law, torture, rape, sexual exploitation or sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other forms of grave sexual assaults, expelling of a group or community

on grounds of political, racial, national, ethnical, cultural, religious or sexual belonging or other inhuman acts committed with the intention to cause physical or psychical suffering, or a one who with the same intention commits some of the aforementioned crimes, shall be sentenced to minimum ten years in prison or life imprisonment."

- The new draft Penal Code also incriminates "organization of a group and instigation to commit genocide and war crimes"
- The draft Penal Code also envisages changes in the description of the crime of "money laundering and other unlawfully gained property" by changing the title to "money laundering and other proceeds from crime" to read as follows: (1) A person who puts into circulation, accepts, takes over, exchange or breaks down a larger amount of money he/she gained as a result of crime, or knowing that the money are gained as a result of a criminal activity, or by conversion or transfer in another way conceals that the money originate from a criminal activity or conceals their location, movement or ownership, shall be sentenced from one to ten years in prison." (2) The prescribed penalty in paragraph 1 shall apply to the person who sells, gives as a gift, or puts in another form of circulation a property or objects of greater value gained as a result of criminal activity, or purchases, accepts as a pledge, or in another way gains, conceals or moves property or objects knowing they are gained as a result of a criminal activity or forgery, or by concealment of facts or criminal source of property or objects, or by concealing their location, movement or ownership. (3) Should the crime of paragraph 1 and 2 be done through banking or financial activities or if by splitting of a transaction one avoids the obligation to register according to the law, the perpetrator shall be sentenced to minimum three years in prison. (4) A person who committed the crime of paragraph 1, 2 and 3, and had a duty and could know that the money, property and other assets or objects were gained by a criminal activity, shall be sentenced to a fine or imprisonment of up to three years. (5) A person who commits the crime of paragraph 1, 2, and 3 as a member of a group or another association which deals with money laundering or properties and profit, or with assistance of foreign banks, financial institutions or persons, shall be sentenced to minimum five years in prison. (6) Official person, responsible person in a bank, insurance company, companies involved in organizing gaming, betting and lottery, exchange offices, stock exchange and another financial institution, lawyer - except when acting as defendant counsel, notary or another person who has public authorities, or acts in public interest, who allows or fails to report money laundering, property or profit, which he/she learned about in performing his/her function or duty, shall be sentenced to minimum three years in prison. (7) Should the crime of paragraph 1 be committed by a legal person, it shall be fined. (8) Money, illegally gained assets, objects or another proceeds from criminal activity shall be confiscated, and should confiscation not be possible, the perpetrator shall be deprived of other property of the same value.

Apart from the changes envisaged with the draft Penal Code, the Ministry of Justice is currently reviewing changes and amendments to the Law on Criminal Procedure whereby, *inter alia*, special investigative measures in criminal procedure

will be introduced, subject to prior changes in article 17 of the Constitution of the Republic of Macedonia (in terms of allowing disclosure, where deemed necessary for prevention or revealing of a crime or where security and defense interests of the country are threatened, of the content of private correspondence and taking some other special measures for the purpose of conducting investigation, on the basis of a court decision/written order from an investigative judge). The first reading of article 17 changes were passed in the Parliament and the second reading will follow soon, with a view to their final adoption by the end of the year 2003.

As to the process of preparation of the draft Law Against Terrorism, according to the programme of work of the Government cabinet, the draft has been scheduled for review in December 2003. The working group within the Ministry of Interior for preparation of the draft law will incorporate modern concepts and solutions in the fight against terrorism as adopted by many European countries, by using comparative analysis and experiences.

1.4., 1.5. and 1.6. Pursuant to Article 26, paragraph 1 of the Law on Prevention of Money Laundering "All natural and legal person, as well as lawyers, notaries public, authorized accountants and auditors have a duty to submit reports to the Directorate for prevention of money laundering on transactions suspicious to be meant to or made for the purpose of money laundering, as well as on transactions suspicious of originating from a criminal activity." Accordingly, for the time being, the law imposes a duty to report only on money laundering.

Being aware of its obligations in the global fight to suppress financing of terrorism and to implement various international instruments and recommendations by FATF, the Government of the Republic of Macedonia recently prepared a draft Law Amending the Law on Prevention of Money Laundering yet to be passed by the National Assembly. The draft law contains a new article which envisages that all subjects which under the Law have a duty to undertake measures and activities to prevent money laundering have a duty to withhold transaction and without any delay, and no longer than 24 hours from withholding, to report to the Financial Police-Unit on prevention of money laundering on transaction suspicious of including clients or any other participants for which domestic or international warrants have been issued for the following crimes: genocide, war crimes and other international crimes, terrorism, murder, burglary, bribery and other serious crimes for which a sentence of minimum four years in prison is prescribed by the law. Also, according to the draft Law, these subjects have a duty to withhold all the transactions which are suspicious of being related to a terrorist activity of a client or a participant in transaction, or should the money or property which are object of transaction be meant to a terrorist activity. The subject has to report to the Financial Police within 24 hours on the reasons for withholding, which can last until the subject is being informed by the Financial Police-Unit on prevention of money laundering that it is allowed to continue with processing of the transaction. The warrants with the names of the perpetrators are to be regularly provided to the Financial Police-Unit on prevention of money laundering and updated by the Ministry of Interior. The withholding of the suspicious transaction may last as long as the client or another participant in transaction is removed from the lists of warrants, or until the person is given a court verdict related to the withheld transaction.

1.7. See answers under 1.2. Some of the aforementioned changes and amendments as contained in the draft Penal Code effectively cover the requirements contained in sub-paragraph 2 (a) of the resolution 1373 (2001).

1.8. The requested explanations refer to article 396 of the Penal Code of the Republic of Macedonia, which has been amended with the changes in the Penal Code adopted by the National Assembly of the Republic of Macedonia on 24th June 2003, which article (entitled "illicit production, possession and trade in arms or dispersible material" now reads as follows: " (1) A person who without authorization manufactures, possesses, sells, purchases or trades in arms, ammunition or explosive material shall be sentenced from one to ten years in prison. (2) Should the object of crime from paragraph 1 be a greater quantity of arms, ammunition or explosive material which are forbidden for the citizens, the perpetrator shall be sentenced to minimum five years in prison. (3) The objects from paragraphs 1 and 2 as well as means of their manufacture, transportation and dissemination shall be confiscated.

The phrase "arms, ammunition or explosive material forbidden for the citizens" stands for arms and dispersible material which cannot be traded in under the law. One should, in that connection, make a distinction between illicit possession of arms, ammunition and explosive material which are under all circumstances forbidden to trade in, and acquisition and possession of arms and other material for which a person has to obtain special license from the competent authorities within Ministry of Interior, otherwise that person commits an offence under the Law on Acquisition, Possession and Carrying of Arms, which law also describes the types of arms, ammunition and explosive material that come under the licensing regime. Recently some changes and amendments to this law have been reviewed by the Government, with a view to putting them in a parliamentary procedure soon.

1.9. Article 6 of the new Law on Asylum and Temporary Protection (published in "the Official Gazette of the Republic of Macedonia" No. 49/2003) contains relevant provisions for the implementation of the resolution 1373, which read as follows: " A foreigner shall have no right to asylum in the Republic of Macedonia provided that:

- there is a founded suspicion that he/she has committed a crime against peace, humanity or a war crime, defined in international instruments prohibiting such crimes;
- he/she has committed a grave criminal offence (non-political) outside of the territory of the Republic of Macedonia prior to his/her refuge in the country; or
- he/she is found guilty for activities which run against the aims and the principles of the United Nations.

1.10. On March 17 2003 the Government of the Republic of Macedonia decided to set up an Interministerial Working Group to design and oversee the implementation of the project for Integrated Border Management. The elaboration of the project is in its advanced stage, i.e. a draft version of the Strategy for the Integrated Border Management has been prepared. The principal goal of this project is to create a capable Border Police Unit that would take over the duty of securing the state border from the Ministry of Defense i.e. from the Army of the Republic of Macedonia, and to provide technical, human and other resources for effective and sustainable integrated border management which will meet the standards for border controlling of the countries of the European Union signatories of the Schengen Agreement. Also, the

implementation of the CARDS projects in this field will continue in the forthcoming period.

In addition, enhanced operative measures on the border crossings will be taken in order to prevent terrorist threats and movement of the terrorists and terrorist groups in the border areas, by using up-to-date technical means to monitor border crossings and to prevent illegal border crossings and usage of forged travel and identification documents. Also in that regard, cooperation and intelligence sharing among relevant national and international subjects will be further strengthened, in accordance with the national and international law.

1.11. The procedures for ratification of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention for the Suppression of Terrorist Bombing by the Republic of Macedonia are under way, with the view to their finalization by the end of the year 2003. With regard to the two remaining UN instruments against terrorism the Republic of Macedonia has not signed yet (Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts against Safety of Fixed Platforms Located on the Continental Shelf), the Ministry of Foreign Affairs has initiated the governmental procedure for their signing, which is under way.

As to the other international instruments, a progress achieved after the last reporting to the Committee, the Republic of Macedonia in May of this year signed the Protocol amending the European Convention for the Suppression of Terrorism and ratified the Second Additional Protocol to the European Convention for International Legal Assistance in Criminal Matters of the Council of Europe.

On point 2 "Assistance and Guidance", the identification of possible areas for the CTC assistance and advise in the projects in this sphere in the Republic of Macedonia is under consideration.





Security Council

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Letter dated 23 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/908).

The Counter-Terrorism Committee has received the attached supplementary report from Uganda, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council

(Signed) **Inocencio F. Arias**
Chairman

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

Note verbale dated 20 October 2003 from the Permanent Mission of Uganda to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of Uganda to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and has the honour to forward the report of Uganda in response to the questionnaire from the Committee (see enclosure).

Enclosure**Supplementary report of Uganda to the Security Council
Committee established pursuant to resolution 1373 (2001)
concerning counter-terrorism****I: BACKGROUND**

Uganda has suffered acts of terrorism since 1988 committed by the so- called Lord's Resistance Army (LRA) and since 1994 by the Allied Democratic Forces (ADF). From 1997 to 2001 50 people died and 200 were injured from bombing terrorist attacks in Kampala and surrounding areas. There is evidence that the simultaneous terrorist attacks against United States Embassies in Dar-Es-Salaam and Nairobi had also been planned to include the US Embassy in Kampala.

A Joint Anti Terrorist (JAT) task force to arrest the situation was established in 1999. JAT comprises the Department of Military Intelligence (lead agency), the Police Criminal Investigation Department (CID) and Special Branch (SB), the External Security Organisation (ESO) and the Internal Security Organisation (ISO).

The United States government has listed the Allied Democratic Forces (ADF) and the Lord's Resistance Army among the Terrorist organisations. The LRA and ADF have had links with Al-qaida.

It is against this background that Uganda reaffirms its commitment to work with International Community to eradicate the scourge of terrorism.

II: Paragraph 1 of Resolution 1373 (2001)**(a) Prevention and suppression of the Financing of Terrorism:**

Financing institutions have hitherto only been required to cooperate with anti-terrorism investigations by JAT. Mainstreaming their participation in the fight against terrorism is under way. So is the participation of the other stakeholders listed in UNSC Resolution 1373 (2001).

Some preliminary contacts have been made with US Treasury officials to sharpen this sector's understanding of the problem.

At the end of 2001 the Uganda Anti- Money Laundering Committee issued a policy document designed to strengthen the fight against money Laundering. The document on combating money Laundering was presented to and passed by Cabinet in 2002. The policy recommendations advocated for consist in the adoption and subsequent implementation of a number of policies and strategies – legal, regulatory and enforcement, and the assignment of responsibilities to key players in the fight against money laundering and terrorism. The policy document forms the basis for the draft anti-money laundering law for Uganda.

The Anti- Terrorism Act, No 14/2002, which came into force on 7th June 2002, applies to inter alia all financial institutions and their intermediaries in Uganda. Whilst the Act confers no specific powers or obligations on supervisory and other financial sector authorities to combat (the financing of) terrorism in Uganda, the Act criminalizes terrorism and it's financing. Financial institutions are thus enjoined together with law enforcement authorities in Uganda to monitor compliance with the anti-terrorism legislation in Uganda. Financial institutions are now required to adhere to and follow anti-money laundering guidelines which are aimed at combating money laundering and terrorism as a predicate offence thereof.

(b) Criminalizing the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.

Section 10 of the Anti-Terrorism Act 2002 states as follows:

'Any person who aids or abets or finances or harbours or in any other way renders support to any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism, commits an offence and shall, on conviction, be sentenced to death.'

(C) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or

controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from the property owned or controlled directly or indirectly by such persons and associated persons and entities.

(d) Prohibit their nationals or any other persons and entities within their territories from making any funds, financial assets or economic resources or financial and other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, or entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.

These issues are dealt with under sections 17, 18 and 19 of the law against terrorism.

Section 17 of the Anti-Terrorism Act states as follows:

(1) A person who:

(a) solicits or invites any other person to give, lend or otherwise make available, whether for consideration or not, any money or other property; or

(b) receives accepts from any other person, whether for consideration or not, any money or other property.

Intending that it shall be applied or used for commission of or in furtherance of or in connection with acts of terrorism, or having reasonable cause to suspect that it may be so used or applied, commits an offence.

(2) A person who:

(a) gives, lends or otherwise makes available to any other person, whether for consideration or not, any money or other property; or

(b) enters into or otherwise concerned in an arrangement by which money or other property is or is to be made available to another person.

Knowing or having reasonable cause to suspect that it will or may be applied or used as mentioned in subsection (1), commits an offence.

Section 18 lays down the offence committed by persons who make contributions to resources of terrorist organisations while section 19 deals with the offence of assisting in the retention and control of terrorist funds.

The penalties for these offences are:

- Forfeiture of the money or property,
- Imprisonment not exceeding ten years and
- A large punitive fine.

Uganda at present has no law on money laundering. The BOU did, however, in December 2002, as an interim measure, issue anti-money laundering guidelines to financial institutions in Uganda. The guidelines require financial institutions to put in place various anti-money laundering policies and measures, to institute the requisite internal control measures and generally to comply with at least certain broad minimum requirements such as the "Know Your Customer/Client" principle(s) and to report any suspicious activities to the Bank of Uganda for further investigation. If the guidelines are fully implemented by financial institutions, then suspicious financial transactions will to a large extent be monitored.

- **Whether financial institutions, other intermediaries (e.g. lawyers) and other natural or legal persons are required to report suspicious transactions to the relevant authorities? Penalties that apply to those who omit to report?**

The Anti-money laundering guidelines mentioned above require financial institutions to report suspicious activities to the Bank of Uganda for further investigation. The guidelines are not enforceable and consequently, no penalties apply to institutions that omit to report. The Bank of Uganda may, however, apply its wide supervisory powers and sanctions against an institution that is found actively supporting terrorism and money laundering. Other intermediaries (e.g. lawyers and other natural or legal persons) are

currently not subject to any (penal) reporting requirement for suspicious transactions.

- **Practical controls and surveillance measures that exist to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted to other purposes, particularly to the financing of terrorism?**

Presently, financing terrorism is a crime under the Anti-Terrorism Act, No.14/2002 (Part V, Sections 12-16 thereof). To avert being party or privy to this offence, donors, etc. must ensure that funds and resources for religious or cultural purposes are not used to finance terrorism or divert to other purposes.

- **Laws and procedures available to regulate alternative remittance systems, including systems of, or similar to the kind known as hawala.**

Presently, Uganda has no laws to regulate alternative remittance systems.

- **Procedures for the freezing and provisional seizure of funds and assets relating to terrorism and its financing. State distinction between seizures occurring in the course of investigations and confiscations ordered upon sentencing.**

Section 16 of the Anti-Terrorism Act, No. 14/2002 permits/provides for the forfeiture (upon applying for and obtaining a court order) of terrorist assets.

Under section 262 B of the Penal Code Act (Cap. 106, LOU), a bank account may be frozen under a court order upon application by the Director of Public Prosecutions.

III: Paragraph2:

(a) Refraining from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.

The Firearms Act 1970 and the Anti-terrorism Act 2002 section 7 caters for the prevention of terrorists obtaining weapons within or outside its territory in particular small arms or light weapons.

The Anti-Terrorism Act 2002 also addresses this in section 8,9, 10, 11 and 12.

Section 9 specifically caters for the offences relating to the supply of weapons to terrorists while section 10 tackles those who support and abet terrorism. Section 11 addresses recruitment of terrorists and establishment of terrorist organisations with section 12 devoted to the offence of misprision of terrorism.

The sentence prescribed for supply of weaponry or explosives is 'death' on conviction. So is the sentence for recruiting, financing, and harbouring terrorists. Misprision of terrorism carries a life sentence under the act.

Uganda is a signatory to various international Conventions against terrorism and their domestication in the newly strengthened anti-terrorism law is in progress. Though the laws of the country are unequivocal in the fight against domestic terrorism the sections dealing with the international aspects were found wanting. The new laws being drafted will therefore give special attention to the globalisation of terrorism.

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other states by exchange of information .

(c) Deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens.

(d) Prevent those who influence, plan, support or commit terrorist acts from using their respective territories for those purposes against other states or their citizens.

(e) Ensure that any person who participates in the financing, planning, preparations of terrorist acts or in supporting terrorists acts is brought to justice and ensure that, in addition to any other measures against them, such terrorists acts are established as serious criminal offences

in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.

The Joint Anti- terrorism task force; which started work in 1999, has been the lead authority in combating terrorism. Following the bombing of the United States' Embassies in Nairobi and Dar-Es-Salaam, JAT re-interrogated all suspects previously cleared of terrorism and related crimes. The possible link between domestic terrorism to Osama Bin Laden and the Al Qaida started getting more into focus.

JAT has exchanged information with many Embassies accredited to Uganda and has carried thorough investigations on any reported terrorist threats.

The Uganda Police Force began sensitisation campaigns nationwide in order to bring the international dimension of terrorism to the attention of the general public.

No information sharing arrangements and/or inter-agency co-ordination arrangements between the authorities responsible for combating money laundering and the financing of terrorism are in place (as yet) in Uganda.

LEGISLATION

Under the Penal Code terrorism had not been accorded the seriousness that it deserved. Enforcement agents did not have proper tools to tackle the complex investigations that are needed to net and prosecute perpetrators of terrorist acts and their networks. It is for this reason that Uganda drafted a new law specifically dealing with terrorism. Although it appears comprehensive in response to domestic terrorism it may be wanting in response to global terrorism and will therefore be studied further to domesticate Uganda's international obligations in the fight against terrorism.

Section 13 of the Anti- Terrorism Act has, in addition to the sections mentioned above, and lays down the offence committed by persons who neglect to prevent acts of terrorism. This offence attracts a sentence of five years on conviction with hefty and punitive fine.

The law also has in the second schedule a list of terrorist organisations, which the Minister for Internal affairs can update from time to time. This list is to be updated to include the lists that have been adopted under the various UNSC resolutions.

It is an offence under the laws of Uganda to be a member, whether passive or active, of a terrorist organisation and conviction for this offence attracts a sentence of ten years imprisonment.

PROSECUTIONS

Between 1999 and 2001 the JAT arrested and charged over sixty persons who had committed varying acts of terrorism but were charged with Treason in the absence of an appropriate law.

There was only one conviction during the period.

The possible reasons for the low prosecution success rate were:

- Overzealous law enforcement personnel missing out on key evidence.
- Lack of technical evidence because of few or poor technical personnel e.g. forensic, photographic, ballistic experts.
- Lack of commitment by prosecution witness.
- Absence of funds to compensate witnesses' lost time and earnings.
- Little awareness about terrorism among the general public.
- The passing of the Amnesty law, which provided an escape route for treason suspects.

(f) Afford one another the greatest measure of assistance in connection with criminal investigations proceedings relating to finance or support of terrorist acts, including assistance in their possession necessary for the proceedings.

Uganda has worked recently with Kenyan tracking down ADF terrorist who were using Kenyan territory to plan and train perpetrators of terrorist attacks in Uganda. The two countries together with Tanzania do exchange information among the Intelligence organs and it the objective of the newly reactivated East African Community to make East Africa one security zone in the not too distant future.

Uganda is also pursuing LRA terrorist in cooperation with the Government of Sudan.

There has also been some improvement in the cooperation in that area between Uganda and Rwanda.

Pursuant to Article 1 of the MOU signed between the member countries of the East and Southern Africa Anti-money Laundering Group (ESAAMLG), Uganda agreed to implement all measures contained in multilateral agreements and initiatives to which it subscribes for prevention and control of the laundering of the proceeds of all serious crimes.

- **Legal timeframe within which a request for judicial assistance in the criminal investigations or criminal proceedings (especially those relating to the financing or other support of terrorists acts) must be met and how long, on average it takes in practice to implement such a request in Uganda.**

No specific time frame exists for complying with a request for judicial assistance in the criminal investigation or proceedings (especially those relating to the financing of terrorism or other support of terrorism).

(g) Prevent the movement of terrorists groups by effective border controls and controls on issuance of identity papers and travel documents, and thorough measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

BORDER CONTROLS

Uganda has signed and ratified all UN and other International Conventions on Terrorism including AU and other regional Treaties.

All Ugandan's entry points are manned 24 hours a day by police, Immigration personnel and the intelligence and security Services. Over ten people have for example been netted at Entebbe with forged passports in the last twelve months.

The arbitrariness of the border of most African countries as made by colonialism make their effective patrol prohibitively expensive and therefore beyond the coffers of the respective countries. There are therefore many cross – border routes usually patronised by smugglers, which could be available for use, by terrorist and terrorist groups.

The solution therefore lies in the creation of regional security zones like the one envisaged under the East African Community

- **Mechanism for inter-agency co-ordination between the authorities responsible for narcotics control, financial tracking and security.**

Presently, Uganda has no specific or explicit information-sharing arrangement or inter-agency co-ordination arrangements between authorities responsible for narcotics control, financial tracking and security, but it is expected that such government inter-agencies co-operate in the execution of their duties.

CONTROL OF TRAVEL AND IDENTITY PAPERS

The Uganda passport was changed in 1993 to include advanced security features and to incorporate information in scannable form.

Uganda has no National Identity Card and is in the process of producing one in the next one year. The committee that has been formed to plan this activity will be sensitised on the requirement by the international Community.

IV: Paragraph 3 of UNSC Resolution 1373 (2001)

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communication technologies by terrorist groups; and threats posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral or multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts.

International cooperation and exchange of information.

Uganda has liaison arrangements with most of the leading countries engaged in the fight against terrorism and continues to exchange information with them on a regular basis.

Uganda has had productive contacts with and is an active member of the International Criminal Police Organisation (INTERPOL) and is Headquarters to the United Nations African Institute for the prevention of Crime and treatment of offenders (UNAFRI).

At the regional level the treaty for East African Cooperation includes cooperation in security matters and there is regular contact between security and intelligence chiefs.

Uganda is also a signatory to relevant regional and Sub-Regional Declarations, Agreements and Protocols that provide extensively for the exchange of information regarding traffic in arms and explosives and falsified documents.

The Extradition Act caters for legal basis for extradition in Uganda.

(d) Become parties as soon as possible to the relevant international convention and protocols relating to terrorism, including the international Convention for the Suppression of the Financing of terrorism of 9 December 1999.

The following international conventions and protocols, have been ratified:

1. Convention on Offences and certain other committed on Board Aircraft. Tokyo, 14 September 1963.

2. Convention for the Suppression of Unlawful Seizure of Aircraft. The Hague, 16 December 1970.

3. Convention for the Suppression of Unlawful acts against the Safety of Civil Aviation. Montreal, 23 September 1971.
4. Convention on the prevention and punishment of crimes against internationally protected persons, including Diplomatic Agents. 4 December 1973.
5. Convention on the physical protection of nuclear material. Vienna, 26 October 1979.
6. International Convention against the taking of hostages. New York, 17 December 1979.
7. Protocol for the suppression of Unlawful Acts of violence at Airports serving international Civil Aviation. Montreal, 24 February 1988.
8. Convention for the suppression of Unlawful Acts against the safety of Maritime Navigation. Rome, 10 March 1988.
9. Protocol for the suppression of Unlawful Acts against the safety of fixed platforms located on the continental shelf. Rome, 10 march 1988.
10. Convention for the marking of plastic explosives for the purpose of detection. Montreal, 1 March 1991.
11. OAU convention on the prevention and combating of terrorism.
12. Convention of the organisation of the Islamic conference on combating Terrorism.
13. International convention for the suppression of terrorist bombings.
14. International convention for the suppression of the financing of terrorism.

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269(1999) and 1368(2001).

Domestic legislation is being studied in order to domesticate relevant provisions of the two resolutions, especially in the areas of international terrorism.

- (f) Take appropriate measures in conformity with the relevant provisions and international law, including standards of human rights, before granting refugee status; for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts.**

Refugee status in Uganda is determined by refugee Eligibility committee, an inter-ministerial organ and includes the police and the relevant security agencies. Refugee status is only granted after the committee has received the input of the police, security and intelligence agencies.

Uganda has since the events of 11 September 2001 attempted to distinguish 'terrorist' from 'freedom fighter'. This distinction will greatly assist the work of the committee.

- (g) Ensure in conformity with international law, that the perpetrators, organisers or facilitators of terrorist acts do not abuse refugee status, and that claims of political motivation are not recognised as ground for refusing requests for the extradition of alleged terrorists.**

The United Nations High Commission for Refugees administers refugee camps in Uganda, in close liaison with the office of the Prime minister and the Police special Branch. These organs ensure that refugee abide by the laws of the country.

Uganda rejects the use of terrorism to achieve political objectives. Claims of political motivation cannot therefore constitute a defence against extradition.

D: Paragraph 4 of UNSC Resolution

Notes with concern the close connection between international terrorism and transnational organised crime, illicit drugs, money laundering, illegal arms-trafficking and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in

this regard emphasizes the need to enhance coordination of efforts on national, sub-regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security.

There is increasing awareness in Uganda about organised crime and its possible interface with terrorism. The police force is therefore adapting quickly to this changing global situation. Uganda still needs to catch up with the rest of the international committee on crimes concerning nuclear, biological and chemical weapons.

As pointed out earlier the Uganda Anti-Money Laundering committee has already produced a basic policy paper to reinforce Uganda's capacity in this area.

V. CONCLUSION

Uganda is making progress in the fight against all known forms of terrorism. This is however a new discipline among most stakeholders. A lot of work still remains to be done in the following areas:

- *Sensitisation of law makers and other bureaucrats.*
 - *Building up data bases and the creation of requisite information networks.*
 - *Increasing capacity among law enforcement and intelligence personnel.*
 - *Strengthening the office of the National Coordination.*
 - *Provide required Anti-Terrorism training for the Financial Sector.*
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Security Council

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**Letter dated 23 October 2003 from the Chairman of the
Security Council Committee established pursuant to resolution
1373 (2001) concerning counter-terrorism addressed to the
President of the Security Council**

I write with reference to my letter of 18 September 2003 (S/2003/906).

The Counter-Terrorism Committee has received the attached third report from Belize submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) **Inocencio F. Arias**

Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

Letter dated 20 October 2003 from the Permanent Representative of Belize to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I refer to your letter of 18 July 2003, in which you requested additional information regarding Belize's implementation of Security Council resolution 1373 (2001). Belize's third report, responding to the questions set forth in the above-mentioned letter, is attached hereto (see enclosure).*

(Signed) H.E. Mr. Stuart W. Leslie
Ambassador and Permanent Representative of Belize

* Annexes are on file with the Secretariat and are available for consultation.

Enclosure

Third report of the Government of Belize to the Counter-Terrorism Committee

The Government of Belize is pleased to provide its responses to the questions and comments of the Counter Terrorism Committee (CTC) transmitted by letter of the Chairman, H.E. Mr. Inocencio Arias, dated 18 July 2003. For accuracy in referencing, the numbering style of the letter has been maintained for the responses.

1. Implementation Measures

1.1 These are further comments in compliance with the CTC's request for additional information on the Government of Belize's implementation of the Resolution.

1.2 (a) Although the Money Laundering (Prevention) Act¹ provides at section 3:01 that "[a] person who, ... engages in terrorism commits an offence and shall be liable on conviction to the same penalties as for money laundering ...," "terrorism" as defined under the Act at section 2 (infra) does not encompass the collection of funds for terrorist purposes and financing of terrorism. In essence, therefore, the Money Laundering (Prevention) Act does not specifically criminalize the collection of funds for terrorist purposes and the financing of terrorism either inside or outside the territory of Belize. It does however provide at section 11:01 for the freezing of funds connected to terrorism and particularly the financing of terrorism as described in the response at 1.2 (b) following.

(b) For the purpose of anti-money laundering supervision, the Money Laundering (Prevention) Act establishes a Supervisory Authority. Amongst other powers, the Act empowers the Supervisory Authority to freeze funds connected with terrorism. Section 11:01 (1) specifically provides that "[w]here the Supervisory Authority has reasonable grounds for believing that the person by, for or on behalf of whom any funds are held is or may be-

(a) a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, or who finances such acts;

(b) a person controlled or owned directly or indirectly by a person in (a), or

(c) a person acting on behalf, or at the direction, of a person in (a)

¹ Chapter 104, Laws of Belize, Revised Edition 2003.

the Supervisory Authority may by notice direct that those funds shall be frozen and shall not be made available to any person.”² Notably, section 11:01(1)(a) gives the Supervisory Authority wide discretion to freeze funds of a person described in sub paragraphs (a) (b) or (c) who finances or may finance terrorist acts even if no transfer of funds from one country to another takes place, or even if the funds are legal in origin.

Section 23(6) of the Act provides broader enabling powers to the Supervisory Authority to “take such action as may be appropriate including the freezing of funds and other financial assets or economic resources of any person to comply or give effect to a resolution of the Security Council of the United Nations adopted under Chapter VII of the United Nations Charter ...” In this context, relevant Security Council resolutions could also form the basis for the Supervisory Authority to freeze funds connected with terrorism.

Finally, the CTC has indicated that acts which are to be criminalized can be committed even if they do not take place or are not intended to take place inside Belize or even if no related terrorist act actually occurs. As indicated above, section 3:01 provides for the criminalization of terrorism. Terrorism as defined at section 2 of the Act means:

“... the use or threat of action where –

- (a) (i) the action falls within sub-paragraph (b),*
- (ii) the use or threat is designed to influence the government or to intimidate the public or a section of the public; and*
- (iii) the use or threat is made for the purpose of advancing a political, religious or ideological cause;*
- (b) action falls within this sub-paragraph if it –*
 - (i) involves serious violence against a person;*
 - (ii) involves serious damage to property;*
 - (iii) endangers a person’s life, other than that of the person committing the action;*
 - (iv) creates a serious risk to the health or safety of the public or a section of the public, or*
 - (v) is designed seriously to interfere with or seriously to disrupt an electronic system;*

² For the purposes of the Act “person” means “any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations.

- (c) *the use or threat of action falling within sub - paragraph (b) which involves the use of firearms or explosives is terrorism whether or not sub-paragraph(a) (ii) is satisfied;*
- (d) *in sub-paragraphs (a), (b) and (c)-*
 - (i) *"action" includes action outside Belize;*
 - (ii) *a reference to any person or to property is a reference to any person, or to property, wherever situated;*
 - (iii) *a reference to the public includes a reference to the public of a country other than that of Belize;*
 - (iv) *"the government" means the government of Belize or of a country other than Belize."*

Based on this definition of terrorism, the criminalization of terrorism at section 3:01 (*supra*) contemplates acts that take place outside of Belize as well as the mere threat of action (i.e. intended and not realized) whether within or outside of Belize.

1.3 Although there is no specific legislation for registering, auditing and monitoring the collection and use of funds and other resources by religious, charitable and other associations, with a view to ensuring that these are not diverted to purposes other than their stated purposes, in particular to the financing of terrorism, all charitable, religious and any other associations are required to incorporate as a company under the Companies Act of Belize³ and are thereafter produced in a Companies Register kept at the Companies Registry. This register is available for searches by any member of the public on the payment of the required fee. This, it is submitted, is a way of keeping track of which associations are formed within Belize. Section 12 of the Money Laundering (Prevention) Act (hereinafter "the Act") imposes an obligation on financial institutions to keep a business transaction record of any business transaction for a period of five years and to allow the Supervisory Authority to enter and inspect the records kept. Further, as provided at section 13 of the same Act, financial institutions are obligated to pay special attention to all complex, unusual or large business transactions or unusual patterns of transactions whether completed or not and to all unusual transactions and to insignificant but periodic transactions which have no apparent economic or lawful purpose. Should they become suspicious that any transaction could constitute or be related to money laundering, they are to promptly report it to the Supervisory Authority and should they fail to comply with the requirements of the Act, criminal sanctions are imposed. The Supervisory Authority or law enforcement agency also has the power to apply to a judge of the Supreme Court for a search warrant pursuant to section 14 or a property tracking and monitoring order pursuant to section 15 of the Act in a situation where there are reasonable grounds for believing *inter alia* that a person has committed, is committing or is about to commit a money laundering offence. Further, a person leaving Belize is obligated under section 18 of the Act to report to the Supervisory Authority if he intends to carry an amount of money exceeding twenty thousand dollars in cash or negotiable bearer instruments (in

³ Chapter 250, Laws of Belize, Revised Edition 2000.

Belize currency or equivalent foreign currency); failure to do so carries with it criminal sanctions. Altogether, these mechanisms serve to monitor financial activities with the aim of preventing and eventually eradicating money laundering practices.

1.4 In light of the CTC's comment on Belize's response in its second report (S/2003/485) to sub-paragraph 2(a), Belize shall identify the appropriate legislation through its comprehensive review of compliance with Security Council resolution 1373.

1.5 There is no legislation addressing the requirement stipulated in sub-paragraph 2(d) of Resolution 1373 viz., that States are required to prevent those who finance, plan, support or commit terrorist acts from using their respective territories for those purposes against other States or their citizens. In order to be in compliance with this sub-paragraph, Belize is seeking to review the matter and enact enabling legislation.

1.6 Section 9 of the Money Laundering (Prevention) Act⁴ specifically provides that *"Notwithstanding anything to the contrary contained in any other law, the offences created by this Act shall be investigated, tried, judged and sentenced by a court in Belize regardless of whether or not the prescribed offence occurred in Belize or in another territorial jurisdiction, but without prejudice to extradition when applicable in accordance with the law."*

The offences created under the present Act are the offence of money laundering at section 3 and the offence of terrorism at section 3:01. Thus, though generally Belizean courts do not have jurisdiction to try persons found in Belize for offences committed outside Belize, certain pieces of legislation have created exceptions, as in the present situation. The latter part of the section, however, has the effect of limiting the exercise of the court's jurisdiction to instances where extradition agreements are not applicable according to the law.

1.7 Every extradition is conditional on the treaty existing between Belize and the Requesting State⁵ or the Requested State.⁶ Since each treaty is separately negotiated, the procedure to be followed in each differs in accordance with the differences in their respective legal regimes.

Where Belize refuses to extradite an individual, the question whether the courts of Belize can prosecute the individual for the offence for which the extradition was originally sought will depend on the circumstances of the particular case. If Belize refuses to extradite an individual despite the existence of an extradition treaty between Belize and the Requesting State, it may be due to several reasons. It could be because the offence does not constitute an extraditable offence or because Belize has the better jurisdiction and is therefore the *forum conveniens*. Belize could have a better jurisdiction if Belize has a better interest; for example, the offender

⁴ *Supra* note 1.

⁵ State requesting extradition of an individual or individuals from Belize.

⁶ State from whom Belize is requesting the extradition of an individual or individuals.

is a citizen of Belize and the offence was committed in Belize against a national of the Requesting State.

Section 7 of the Extradition Act⁷ provides that where the Chief Magistrate dismisses the charge against the person in respect of whom an application for extradition has been made, the Director of Public Prosecutions (hereinafter "the DPP") may require the said Magistrate to transmit to him all evidence and documents connected with the case – and the Magistrate will be duty-bound to comply forthwith. If the DPP is of the opinion that the charge should not have been dismissed, the DPP may apply to the Supreme Court for a warrant of arrest of the accused person. If the Court is of the opinion that the charges should not have been dismissed, it may make such order as the Magistrate should have made. A copy of the Extradition Act is annexed to the present report.

Where no extradition treaty exists between Belize and the Requesting State, the question whether the courts of Belize can prosecute an individual for the offence for which the extradition was originally sought, after Belize has refused to extradite the individual, will be governed by the common law of Belize and the rules of international law on the issue of *forum conveniens*. The courts of Belize will have jurisdiction to prosecute the individual if the act he committed constitutes an offence under the laws of Belize, and the said offence was committed in Belize. A greater degree of jurisdiction will arise if the individual is a citizen of Belize and/or if the offence was committed against a Belizean national.

1.8 Belize recalls its response to operative paragraph 2, sub-paragraph (g) of its initial report, document S/2001/1265 dated 27 December 2001. The Department of Immigration and Nationality Services is in charge of border control and of issuing nationality certificates. Background security checks are conducted on applicants and should there be any suspicion, an investigation into the identity of the individual is launched. The Belize Defence Force along with the Belize Police Department conduct frequent border patrols at key border crossing areas especially between the Belize/Guatemala border. Together, these agencies conduct operations within our borders and territorial waters targeting offences pertaining to their respective agency. Should there be caution on a certain individual(s), All Points Bulletins (APBs) are posted at every point of entry and at all police stations throughout the country for a lookout on that certain individual(s). Although the processing of entrants is manual, many officers possess training in identification of false documentation. There are also mechanisms such as the ultraviolet lamps ("black lights") which are used to verify the authenticity of documents such as passports which are equipped with certain security features. Apart from these measures, Belize has not enacted specific legislative measures to address the matter.

1.9 Belize has undertaken treaty action in respect of nine of the 12 international instruments related to the prevention and suppression of international terrorism. Accordingly, Belize is a state party to the following conventions:

⁷ Chapter 112, Laws of Belize, Revised Edition 2000.

- a. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons
- b. International Convention for the Suppression of Terrorist Bombings
- c. Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation
- d. Hague Convention for the Unlawful Seizure of Aircraft
- e. Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft
- f. Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
- g. Convention against the Taking of Hostages

Further, Belize has signed onto the:

- h. International Convention for the Suppression of the Financing of Terrorism
- i. Convention on the Marking of Plastic Explosives for the Purpose of Detection

On 16 September 2003, the Cabinet agreed to recommend Senate approval of Belize's ratification of the International Convention for the Suppression of the Financing of Terrorism.

The other conventions including the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Convention on the Physical Protection of Nuclear Materials, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf have not yet been recommended for Senate approval.

1.10 To date, no additional legislative measures have been implemented to prevent the granting of refugee status from being abused by terrorists, their facilitators and their supporters beyond those measures addressed in Belize's initial report, document S/2001/1265, at operative paragraph 3, sub-paragraphs (f) and (g).

The Government of Belize remains committed to the full implementation of Security Council Resolution 1373. To this end and also prompted by the questions and comments of the Counter Terrorism Committee, Belize is in the process of conducting a comprehensive reviewing of its compliance with the said resolution with the aim of enacting measures including legislative and administrative measures which would enable Belize's full compliance therewith.